

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC**

In the matter of )  
)  
Amendment of Part 90 of the Commission's ) WT Docket No. 01-146  
Rules and Policies for Applications and ) RM-9966  
Licensing of Low Power Operations in the )  
Private Land Mobile Radio 450-470 MHz )  
Band )

To: The Commission, *en banc*

PETITION FOR RECONSIDERATION

AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully petitions the Federal Communications Commission for reconsideration and modification, as hereinafter set forth, of its Report and Order (R&O) in the captioned proceeding, FCC 03-35, released March 11, 2003 and published at 68 Fed. Reg. 19444 (April 21, 2003). In support of its petition, AAPC respectfully states:

Background

In this proceeding, the Commission has substantially revised its Part 90 rules and policies governing low power operations in the 450-470 MHz band, largely adopting recommendations submitted by the Land Mobile Communications Council (LMCC). Among other things, the Commission designated twenty-one 12.5 kHz channel pairs and four unpaired frequencies (the so-called "Group C" pool) for non-coordinated, itinerant mobile use, subject to six watts ERP for mobile units and two watts ERP for portable units.

Within the Group C pool are eight frequencies (four paired and four unpaired)<sup>1</sup> which are 12.5 kHz removed from paging-only frequencies licensed on a shared basis in the Commercial Mobile Radio Services.<sup>2</sup> Additionally, at least seven of these eight frequencies are currently available for assignment to hospitals and health care institutions for medical radio telemetry operations on a secondary basis.<sup>3</sup> However, the Commission concluded that the proposed non-coordinated, itinerant use of the Group C frequencies would cause harmful interference to the telemetry operations.<sup>4</sup> Accordingly, the Commission prohibited itinerant use stations on these frequencies until the end of the transition period, currently scheduled for October 2003, for the migration of such operations to the new Wireless Medical Telemetry Service established in ET Docket No. 99-255.<sup>5</sup>

AAPC is a newly organized national trade association representing the interests of paging carriers throughout the United States. AAPC officially organized and commenced operation at its first annual meeting at Myrtle Beach, South Carolina, on May 31, 2002; and since that time it has actively participated in proceedings before the Commission affecting the paging industry.

Additional information concerning AAPC may be found at its web site [www.pagingcarriers.org](http://www.pagingcarriers.org).

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<sup>1</sup> The four unpaired frequencies are 462.7625 MHz, 462.7875 MHz, 462.8125 MHz and 462.8375 MHz. The four paired frequencies are 462.8625 MHz, 462.8875 MHz, 462.9125 MHz and 462.9375 MHz. All of these frequencies currently are subject to Section 90.35(b)(3)(67) of the rules, and sometimes may be referred to collectively hereinafter as the “90.35(b)(3)(67) Frequency Group”.

<sup>2</sup> The CMRS paging frequencies are 462.7500 MHz, 462.7750 MHz, 462.8000 MHz, 462.8250 MHz, 462.8500 MHz, 462.8750 MHz, 462.9000 MHz and 462.9250 MHz.

<sup>3</sup> See R&O at ¶60 & n. 185. The frequencies identified in the R&O include 462.7625 MHz, 462.7875 MHz, 462.8125 MHz, 462.8375 MHz, 462.8625 MHz, 462.8875 MHz and 462.9125 MHz. In addition, however, the frequency 462.9375 MHz also is subject to Note 67 in the table of frequencies in the Industrial/Business Pool (Section 90.35(b)(3)(67) of the rules), but the R&O does not list it as one of the frequencies available for medical telemetry operations.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* Revised Section 90.267(e)(3).

Many members of AAPC are licensed for and operate paging systems on the 462 MHz paging frequencies which are 12.5 kHz removed from the eight Group C frequencies referenced above, i.e., 12.5 kHz removed from the 90.35(b)(3)(67) Frequency Group. For example, AAPC's membership includes the 26-carrier SouthernNet Association of Paging, LLC, which operates a wide-area, satellite controlled paging network on 462.8750 MHz throughout the southeastern United States. AAPC's members are thus directly affected by the actions taken in the R&O and, as explained below, are aggrieved thereby.

AAPC further points out that the interests of paging carriers have not heretofore been represented in this proceeding. AAPC itself was not formed until after the comment period had closed on the Notice of Proposed Rule Making, and obviously could not have participated during the comment stage. Additionally, PCIA had stopped representing the paging industry by that time, although that fact had not been made public or even made known to the paging carriers. Accordingly, the actions in the R&O clearly have been taken without adequate consideration of their impact on paging carriers.

#### Grounds for Reconsideration

Reconsideration of the R&O is warranted with respect to the 90.35(b)(3)(67) Frequency Group for two basic reasons: First, continued use of the frequencies only 12.5 kHz removed from CMRS paging frequencies is fundamentally inconsistent with the statutory requirement that Part 90 CMRS licensees be "subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services".<sup>6</sup> Rather than continue using the frequencies for low power operations, therefore, the Commission properly should prohibit altogether the licensing of any new stations on these eight frequencies.

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<sup>6</sup> Omnibus Budget Reconciliation Act of 1993 (OBRA), Pub. L. 103-66, Title VI, §6002(d)(3), 107 Stat. 397.

Second, regardless of OBRA's provisions, the non-coordinated, itinerant use of these frequencies poses an unacceptable risk of harmful interference to paging receivers operating on the 462 MHz CMRS paging frequencies. On that basis alone the R&O should be reconsidered and modified.

In addition to modifying Section 332 of the Communications Act to, *inter alia*, establish the CMRS classification, the 1993 OBRA contained in Section 6002(d)(3), 107 Stat. 397, certain uncodified requirements governing the implementation of the CMRS classification. Included was the requirement that the Commission,

in the regulations that will . . . apply to a service that was a private land mobile service and that becomes a commercial mobile service . . . , shall make such other modifications or terminations as may be necessary and practical *to assure that [Part 90] licensees . . . are subjected to technical requirements that are comparable to the technical requirements that apply to [Part 22] licensees that are providers of substantially similar common carrier services* (Emphasis added).

Private Carrier Paging Stations (PCPS) licensed on the eight 462 MHz paging frequencies at issue here are one of the services, in the words of OBRA “that was a private land mobile service . . . that [became] a commercial mobile service (as a consequence of [OBRA])”. Accordingly, “in the regulations that will . . . apply” to PCPS licensees, the Commission is obligated to make such “modifications or terminations as may be necessary and practical to assure” that PCPS licensees “are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services,” *i.e.*, that are comparable to the technical requirements that apply to Part 22 licensees.

Part 22 licensees in the 450-470 MHz band are not required to operate with 12.5 kHz spacing between assignable frequencies or to suffer the adjacent channel interference arising from such narrowbanding; instead they operate with 25 kHz spacing between assignable frequencies. Plainly, therefore, the Part 90 CMRS licensees are *not* subject to “comparable techni-

cal requirements” to those applicable to Part 22 licensees, as OBRA requires; and the Commission should take this opportunity to correct the situation by eliminating the licensing of stations on the frequencies only 12.5 kHz removed from the 462 MHz PCPS paging frequencies.<sup>7</sup> To do so the Commission should modify Section 90.35(b)(67) of the rules to eliminate any reference to itinerant operation and to prohibit all new stations licensed after May 21, 2002, the effective date of the rules promulgated in the R&O. As a companion matter, the Commission also should eliminate the 90.35(b)(67) Frequency Group from the Group C pool.

Furthermore, regardless of the technical comparability with Part 22 mandated by the 1993 OBRA, AAPC respectfully submits that the non-coordinated, nationwide itinerant use of the 90.35(b)(3)(67) Frequency Group as authorized by the R&O poses an unacceptable risk of harmful interference to paging receivers operating on the 462 MHz PCPS paging frequencies. For that reason alone the R&O should be reconsidered and such usage should be eliminated.

As the Commission acknowledges, the intended use of the Group C pool is by construction companies and small businesses, such as electricians, plumbers and others, who need short-term, on-site communications.<sup>8</sup> These users, as well as businesses with which they interact on-site, also are large users of paging service. It is thus likely that the six watt ERP mobile and two watt ERP portables will be operating in extremely close proximity to – literally within a few feet of -- paging receivers operating only 12.5 kHz removed.

As the Commission knows, 462 MHz CMRS paging systems currently are authorized 20 kHz bandwidths and are assigned with at least 25 kHz separation from other paging systems. As

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<sup>7</sup> *A fortiori* no 6.25 kHz “drop in” frequencies should be licensed within 25 kHz of the CMRS 462 MHz paging frequencies. Although the R&O suggests (at ¶55 & n. 166) that 6.25 kHz spacing would apply immediately above and below the individual frequencies in the 90.35(b)(3)(67) Frequency Group, there is no separate indication in the rule modifications adopted in the R&O that this is so.

<sup>8</sup> *E.g.*, R&O at ¶55.

a result, the adjacent channel rejection capabilities of the paging receivers operating on these frequencies are engineered accordingly, and their ability to reject adjacent channel signals only 12.5 kHz removed is limited.<sup>9</sup> Therefore, even though the 90.35(b)(3)(67) Frequency Group stations would be operating at low powers, the fact that they are likely to be transmitting as closely as a few feet away from the paging receiver means that harmful interference to the pager is likely to result.

This likelihood is magnified considerably by the fact that the Group C pool will be licensed and operated on a non-coordinated, nationwide itinerant basis. There will thus be no opportunity to guard against harmful interference under the rules adopted by the R&O. The Commission has otherwise recognized the incompatible nature of non-coordinated, itinerant operation with normal land mobile service in similar contexts;<sup>10</sup> it should likewise recognize and prohibit it on the 90.35(b)(3)(67) Frequency Group at issue here.

In this regard, AAPC points out that the nature of the authorized Group C operation is fundamentally different than the 90.35(b)(3)(67) Frequency Group as used at present. As the R&O notes, the 90.35(b)(3)(67) Frequency Group is substantially used for medical telemetry operations, which generally are limited to 20 milliwatts output power by Section 90.267(a)(5) of the rules. Additionally, hospitals and medical complexes likely to have such telemetry operations also are areas where pager use is very active, and where a carrier will normally make certain the signal level is more than adequate throughout the facility to assure reliable paging ser-

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<sup>9</sup> AAPC is aware that the Commission has adopted rules in the so-called Part 90 “Re farming” proceeding to mandate 12.5 kHz operation on the PCPS frequencies. At the appropriate time, AAPC intends to seek reconsideration and modification of the Commission’s decision to the extent necessary to harmonize it with the position taken by AAPC in this proceeding.

<sup>10</sup> See, e.g., R&O at ¶57 (mixing non-coordinated, itinerant use with dockside channels deemed to pose unacceptable risk of harmful interference); R&O at ¶58 (fixed operation deemed incompatible with non-coordinated, itinerant operation); R&O at ¶60 (non-coordinated, itinerant use deemed incompatible with medical telemetry operations).

vice. This is commonly done by establishing additional base stations at the facility in order to strengthen received signal level.

As a result, there is little risk to existing paging operations from adjacent channel medical telemetry; in fact, any risk of interference normally would be *to* the medical telemetry from the paging base stations, rather than *vice versa*.<sup>11</sup> Thus, the lack of documented interference on these frequencies under the existing environment does not provide any useful guidance on the likelihood of harmful interference under the rules adopted in the R&O.

In short, non-coordinated, nationwide itinerant operation on the 90.35(b)(3)(67) Frequency Group, even under the power limits adopted in the R&O, is fundamentally incompatible with adjacent channel paging operations and poses an unacceptable risk of harmful interference to adjacent channel paging receivers. Accordingly, wholly apart from the Commission's statutory obligation under the 1993 OBRA to establish technical regulations for Part 90 CMRS licensees that are "comparable to the technical requirements" applicable to Part 22 CMRS licensees, the public interest in avoiding harmful interference to Part 90 CMRS paging licensees itself dic-

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<sup>11</sup> Presumably, the frequency coordination process to which the medical telemetry stations are subject is effective in preventing the licensing of medical telemetry stations too close to adjacent channel paging base stations to result in harmful interference.

tates that the R&O should be reconsidered and modified to eliminate the licensing and use of the 90.35(b)(3)(67) Frequency Group.

Respectfully submitted,

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PAGING CARRIERS

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